



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Business Systems, Inc.

File: B-246514

Date: March 13, 1992

Alan K. Nunokawa for the protester.
Gregory H. Petkoff, Esq., and Gerald A. Williams, Esq.,
Department of the Air Force, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency properly rejected protester's best and final offer (BAFO) as technically unacceptable, where the protester furnished a revised equipment list with its BAFO that facially was all inclusive but did not include two mandatory pieces of equipment; the protester, at the very least, created an ambiguity as to whether it was offering this equipment.

DECISION

Federal Business Systems, Inc. (FBS) protests the rejection of its best and final offer (BAFO) as technically unacceptable and the award of a contract to another firm under request for proposals (RFP) No. F02601-90-R-0004, issued by the Department of the Air Force, for the acquisition of a hospital telecommunications system for the Davis-Monthan Air Force Base Composite Medical Facility.

We deny the protest.

The RFP, issued on November 30, 1990, contemplates the award of a firm, fixed-price contract for a 1-year base period and four 1-year options. The base year of the RFP calls for the installation of a complete hospital telecommunications system, comprised of a digital switching system under contract line item number (CLIN) 0001, a distribution system under CLIN 0002, a transmission system under CLIN 0003, and premise equipment under CLIN 0004. The RFP also provides for a variety of follow-on expanded services for the telecommunications system for both the base year and the 4 option years. The RFP states that award will be made to the technically acceptable offeror with the lowest price, including options.

The Air Force received initial proposals on May 24, 1991. The protester's technical proposal included a narrative description of its proposed telecommunications system, with specific responses to the requirements embodied in the RFP's statement of work. The protester also appended to its proposal a detailed equipment list that referenced, by manufacturer's part number, the components of each product offered under the installation line items, CLIN Nos. 0001 through 0004.

After evaluating the initial proposals, the Air Force determined three offerors to be within the competitive range, including FBS and Witel Communication Systems, Inc. The agency's discussions with FBS consisted of three requests for additional information and the protester's written clarifications. In its first correspondence, the agency requested, among other things, that the protester identify the product proposed to satisfy the requirement for a 10-line teleconferencing system. The agency also requested clarification as to the proposed manhole and duct distribution system for fiber optic and non-fiber optic cable.

The protester's written response, dated June 26, 1991, identified a Tellabs 281A 10-line teleconferencing system. The protester also responded that it would comply with applicable RFP requirements in constructing the manhole and duct distribution system and, in particular, would provide 4-inch nominal diameter multi-ducts surrounded by galvanized steel conduits, as required by the RFP. The protester also revised the equipment list from its initial proposal and attached this to the text of the clarifications.

At the close of discussions, the agency found each of the three offerors technically acceptable and issued a request for BAFOs. FBS' BAFO included a revised equipment list that reflected various changes in product quantity and quality from its earlier equipment lists. The Air Force did not request this equipment list. FBS' BAFO equipment list did not include the required 10-line teleconferencing system or the galvanized steel conduits, although FBS had promised to supply these items in its earlier submitted written clarifications. The BAFO equipment list also designated a manhole configuration that ostensibly exceeded the suggested distance for conduit runs between manholes. Finally, the equipment list substituted, without description, a 250 amp rectifier for the 150 amp rectifier offered in FBS' initial proposal as clarified during discussions. The BAFO equipment list did not indicate that it was a partial list of the required equipment and did not include any explanatory literature.

Although the Air Force previously regarded FBS' proposal as technically acceptable, it viewed the BAFO as technically unacceptable owing to revisions and omissions reflected in the equipment list, as described above. As a result, the agency rejected FBS' low offer of \$899,164 and awarded the contract to Wiltel, the next low offeror, at a price of \$906,282.

The protester has disputed each of the reasons advanced by the agency to justify the rejection of its BAFO. For example, the protester claims that the agency could not reasonably find that it had withdrawn its earlier offer of a 10-line teleconferencing system and the galvanized steel conduits by failing to mention these products in its BAFO equipment list. The protester claims that the BAFO equipment list only supplemented the offers made in its initial proposal and written clarifications; these earlier offers, according to the protester, constituted binding undertakings that the BAFO implicitly retained.

In a negotiated procurement, an offeror must affirmatively demonstrate that its proposal will meet the government's needs where required by the solicitation. Electronic Coms., Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 15; Intertec Aviation, B-239672.4, Apr. 4, 1991, 91-1 CPD ¶ 348. Where, as here, a solicitation requires offerors to furnish information necessary to establish compliance with the specifications, an agency may reasonably find a proposal that fails to include such information technically unacceptable. Inter-Continental Equip., Inc., B-224244, Feb. 5, 1987, 87-1 CPD ¶ 122.

FBS asserts that the BAFO equipment list supplemented its prior technically acceptable proposal and, therefore, did not withdraw the 10-line teleconferencing system and the galvanized steel conduits. However, the BAFO neither identified the equipment list as supplemental nor did it incorporate or reference the prior proposal information. Instead, the BAFO cover letter advises that the BAFO reflects "adjustments" resulting from technical clarifications since the May 24 initial proposal, and that the attached list "clarif[ies] equipment/materials included in specific CLIN line items." In our view, this language reasonably suggests that the BAFO equipment list comprehends all changes since the May 24 initial proposal, supersedes prior proposal documents, and includes all equipment to be supplied in satisfaction of the RFP requirements. See Electronic Coms., Inc., supra. We also note that by letter dated September 18, after BAFOs but prior to being advised of the rejection of its proposal, FBS wrote to the agency to

"provide additional technical clarification and to correct human errors that were inadvertently included in the clarification tables" in its BAFO.

FBS argues that its BAFO equipment list did not need to incorporate or to restate its earlier offers of the teleconferencing system or the galvanized steel conduits because its prior written clarifications bound it to provide these features. We disagree. A BAFO may revise or supersede any aspect of a prior proposal, provided that the offeror is willing to take the risk that the changes may render a previously acceptable proposal unacceptable. Control Data Corp. and KET, Inc., 60 Comp. Gen. 548 (1981), 81-1 CPD ¶ 531; Electronic Coms., Inc., supra; see also Dynalelectron Corp; Lockheed Elecs. Co., Inc., 54 Comp. Gen. 1009 (1975), 75-1 CPD ¶ 341 (agency could reasonably interpret salary information in BAFO cost proposal as superseding salary information in initial technical proposal). By including an equipment list in its BAFO that failed to mention certain features offered in a prior proposal, we believe that FBS created, at the very least, an ambiguity as to whether its BAFO had retained or withdrawn the required teleconferencing system and galvanized steel conduits. Electronic Coms., Inc., supra.


In our view, the protester's failure to reference these features in its revised BAFO equipment list provided a reasonable basis for the rejection of its proposal as unacceptable, as these features were clearly related to the proposal's acceptability.¹ FBS assumed the risk that revisions to its BAFO might raise questions about whether its system satisfied the contract requirements which might result in a determination of technical unacceptability, since an agency is not obligated to reopen discussions so that an offeror may remedy defects introduced into a previously acceptable proposal. RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563.

FBS also claims that the Air Force violated Federal Acquisition Regulation (FAR) § 33.103(a)(2). Under this provision, an agency must withhold the award of a contract once it receives an agency-level protest. However, since the Air

¹Because we deny the protest on this basis, we need not address whether other revisions to the BAFO, e.g., the proposed change in rectifier model and the newly proposed manhole configuration, also justified a finding of technical unacceptability.

Force received FBS' agency-level protest 1 day after it had awarded the contract to Wiltel, that provision is inapplicable. Also, there is no requirement for an agency to suspend performance of an awarded contract owing to a post-award agency-level protest where it does not appear the award will be invalidated. FAR § 33.103(a)(4).

The protest is denied.²


for James F. Hinchman
General Counsel

²Since FBS' proposal was properly rejected as unacceptable, we need not consider its contention that the agency improperly disclosed its price proposal to the technical evaluators.